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9
10 **BEFORE THE**
RESPIRATORY CARE BOARD
11 **DEPARTMENT OF CONSUMER AFFAIRS**
STATE OF CALIFORNIA

12 In the Matter of the Statement of Issues Against:

Case No. S-376

13 KATHLEEN J. WHALEN
20514 Raymond Avenue
14 Torrance, California 90502

STATEMENT OF ISSUES

15 Respondent.
16

17 Complainant alleges:

18 PARTIES

19 1. Stephanie Nunez (Complainant) brings this Statement of Issues solely in
20 her official capacity as the Executive Officer of the Respiratory Care Board of California
21 (Board), Department of Consumer Affairs.

22 2. On or about September 18, 2006, the Board received an application for a
23 Respiratory Care Practitioner License from Kathleen J. Whalen (Respondent). On or about
24 September 11, 2006, Respondent certified under penalty of perjury to the truthfulness of all
25 statements, answers, and representations in the application. The Board denied the application on
26 December 11, 2006.

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4. Section 3710 of the Code states: “The Respiratory Care Board of California, hereafter referred to as the board, shall enforce and administer this chapter [Chapter 8.3, the Respiratory Care Practice Act].”

6. Section 3732, subdivision (b) of the Code states:

7. Section 3750 of the Code states:

“ . . .

“ . . . ”

“A plea or verdict of guilty or a conviction following a plea of nolo contendere made to a charge of any offense which substantially relates to the qualifications, functions, or duties of a respiratory care practitioner is deemed to be a conviction within the meaning of this article. The board shall order the license

1 suspended or revoked, or may decline to issue a license, when the time for appeal
2 has elapsed, or the judgment of conviction has been affirmed on appeal or when an
3 order granting probation is made suspending the imposition of sentence,
4 irrespective of a subsequent order under Section 1203.4 of the Penal Code allowing
5 the person to withdraw his or her plea of guilty and to enter a plea of not guilty, or
6 setting aside the verdict of guilty, or dismissing the accusation, information, or
7 indictment.”

8 9. Section 3752.6 of the Code states:

9 “For purposes of Division 1.5 (commencing with Section 475), and this
10 chapter [the Respiratory Care Practice Act], a crime involving sexual misconduct
11 or attempted sexual misconduct, whether or not with a patient, shall be considered
12 a crime substantially related to the qualifications, functions, or duties of a
13 respiratory care practitioner.”

14 10. California Code of Regulations, Title 16, section 1399.370, states:

15 “For the purposes of denial, suspension, or revocation of a license, a crime
16 or act shall be considered to be substantially related to the qualifications, functions
17 or duties of a respiratory care practitioner, if it evidences present or potential
18 unfitness of a licensee to perform the functions authorized by his or her license or
19 in a manner inconsistent with the public health, safety, or welfare. Such crimes or
20 acts shall include but not be limited to those involving the following:

21 “. . .

22 “(e) Conviction of a crime involving lewd conduct, prostitution or
23 solicitation thereof, or pandering and/or indecent exposure, as defined by the Penal
24 Code.”

25 COST RECOVERY

26 11. Section 3753.5, subdivision (a) of the Code states:

27 "In any order issued in resolution of a disciplinary proceeding before the
28 board, the board or the administrative law judge may direct any practitioner or

1 applicant found to have committed a violation or violations of law to pay to the
2 board a sum not to exceed the costs of the investigation and prosecution of the
3 case."

4 12. Section 3753.7 of the Code states:

5 "For purposes of the Respiratory Care Practice Act, costs of prosecution
6 shall include attorney general or other prosecuting attorney fees, expert witness
7 fees, and other administrative, filing, and service fees."

8 13. Section 3753.1, subdivision (a) of the Code states:

9 "An administrative disciplinary decision imposing terms of probation may
10 include, among other things, a requirement that the licensee-probationer pay the
11 monetary costs associated with monitoring the probation."

12 CAUSE FOR DENIAL OF APPLICATION

13 (Conviction of a Crime)

14 14. Respondent's application is subject to denial under Code sections
15 3750, subdivision (d), 3752, and 3752.6, and California Code of Regulations, Title 16,
16 section 1399.370, subdivision (e), in conjunction with section 3732, subdivision (b), in
17 that Respondent was convicted of a crime substantially related to the qualifications,
18 functions and duties of a respiratory care practitioner. The circumstances are as follows:

19 A. On or about May 12, 2004, Los Angeles police officers in the Vice
20 Unit were working in an undercover capacity. One of the undercover officers
21 posed as a customer and called a prostitution advertisement on the Internet.
22 Respondent answered the telephone call and agreed to meet the undercover officer
23 at a specified time in the lobby of an apartment complex. When Respondent
24 arrived at the apartment complex, the officer said he had \$300.00, and asked her if
25 that would cover everything (everything is street vernacular for oral copulation and
26 sexual intercourse). Respondent said yes. Respondent was then arrested for
27 solicitation of prostitution. Respondent spontaneously stated, "Why are you
28 arresting me? I haven't done anything yet." She later stated, "I just posted my ad

1 today. I've been watching those ads for weeks and decided to do it."

2 B. On or about May 24, 2004, in Los Angeles County Superior Court
3 Complaint No. 4PN02857, Respondent was charged with disorderly conduct:
4 prostitution, in violation of Penal Code section 647(b), a misdemeanor (Count 1),
5 and failure to have an escort permit, in violation of Los Angeles Municipal Code
6 section 103.107.1(b), a misdemeanor (Count 2).

7 C. On or about June 2, 2004, pursuant to a negotiated plea agreement,
8 Respondent was convicted upon her plea of nolo contendere to disorderly conduct:
9 prostitution (Count 1). Proceedings were suspended, and Respondent was placed
10 on probation for one year on the following terms and conditions, among others:
11 pay a citation fee of \$10.00 and a restitution fine of \$100.00; perform 40 hours of
12 community service; and complete an aids education class. Pursuant to the
13 negotiated plea agreement, Count 2 of the complaint was dismissed.

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PRAYER

WHEREFORE, Complainant requests that a hearing be held on the matters herein alleged, and that following the hearing, the Respiratory Care Board issue a decision:

- 1. Denying the application of Kathleen J. Whalen for a Respiratory Care Practitioner License;
- 2. Directing Kathleen J. Whalen to pay the Respiratory Care Board the costs of the investigation and enforcement of this case, and if placed on probation, the costs of probation monitoring; and
- 3. Taking such other and further action as deemed necessary and proper.

DATED: March 7, 2007

Original signed by Liane Zimmerman for:
STEPHANIE NUNEZ
Executive Officer
Respiratory Care Board of California
Department of Consumer Affairs
State of California
Complainant